

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1163 of 2014
IN
Civil Writ Jurisdiction Case No. 4136 of 2014**

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Murlidhar Rai S/o Late Madhav Rai Resident of Mohalla House No. NA/5,
Chitragupta Nagar, Sichai Colony, Police Station Kankarbagh, District Patna.

.... Appellant

Versus

1. The State of Bihar.
2. The Secretary General Administrative Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
4. The Additional Secretary, Department of Industry, Government of Bihar, Patna.
5. The Director of Industry, Department of Industry, Government of Bihar, Patna.
6. The Managing Director, Bihar State Handloom Powerloom and Handicraft Development Corporation Pvt. Ltd. Udyog Bhawan, Bihar, Patna.
7. The Accountant General Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Braj Bhushan Mishra, Advocate
Mr. Damodar Prasad Tiwary, Advocate

For the Respondent State: Mr. Ranjan Kumar Singh, Advocate

For the Accountant General : Mr. S.M.Ehtasham, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 19-04-2017

The order dated 17th June, 2014 passed by the learned single Judge in C.W.J.C. No. 4136 of 2014 is under challenge in the Letters Patent Appeal. The prayer of the petitioner for quashing the order of the Additional Secretary, Department of Industries, Government of Bihar, rejecting the prayer for grant of pensionary benefit was challenged in the said writ application. It was the case of the present appellant that the post of Finishing Master is a Government post and, therefore, he is entitled to benefit of



pensionary benefits like a Government servant.

What is the basis for making such a submission was not appreciated by the learned single Judge nor is it being appreciated by the Division Bench. The predominant evidence including the appointment letter of the petitioner indicate that the petitioner was appointed on the post of Finishing Master under the Bihar Cottage Industries Dye House, Gulzarbagh, Patna, which is a unit of company, namely, the Bihar State Handloom, Powerloom and Handicraft Development Corporation Pvt. Ltd., incorporated under the Companies Act. All the documents, which have been annexed in relation to the benefit of service like pay-scale, promotion, etc., have all been issued under the authority of the company/Corporation and merely because one authority or the other, especially the Managing Director, also happened to be in dual capacity as a Government servant, the company does not alter its status to that of a Government department.

The learned single Judge considered the various submissions and has concluded in the following terms:

“5. In course of argument, it has transpired that Contributory Provident Fund Scheme was applicable in case of employees of the Corporation. The petitioner was admittedly a part of that scheme. The petitioner cannot claim



applicability of Bihar Pension Rules at this stage after having superannuated in the year 2006 itself. Even otherwise, I do not find any legal reasoning to apply Bihar Pension Rules with respect to employees of the Corporation. Similar issue was raised by some of the employees of Gandak Command Area Development Agency by filing C.W.J.C. No. 21105 of 2013. This Court by an order dated 24.03.2014 negated the claim with the following observations:-

“The plea that in view of office order dated 10.08.1999, Bihar Pension Rules should be made applicable also cannot be sustained. This is for the two reasons. Firstly, this is an admitted fact that petitioners are covered by Contributory Provident Fund Scheme w.e.f. 01.04.1979. Therefore, on the date of issuance of office order dated 10.08.1999, the petitioners had already remained under the scheme for quite some time. The said office order dated 10.08.1999 does not specifically refer to applicability of Bihar Pension Rules to the employees of GADA. The said office order has just referred to grant of facilities in terms of Government Rules/ Regulations and Bihar Service Code till approval by the State Government of service conditions of the employees of GADA. Admittedly, service conditions of employees of GADA came to be approved w.e.f. 11.02.2010 and all the petitioners, by virtue of the provision under Rule 49 of the said Rules, would be treated to have been appointed under those rules and their service conditions would be governed by those



rules ”

6. This is to be noted that in present case the petitioner has claimed relief on the ground that in the first meeting of the Board of Directors of Bihar State handloom, Powerloom and Handicrafts Development Corporation Limited held on 25.07.1974, it was resolved that until the Corporation framed its own rules, it might adopt Rules and Regulations of the Government of Bihar. However, the present case is entirely covered by the ratio of the order dated 24.03.2014 passed in C.W.J.C. No. 21150 of 2013. I, therefore, find this writ application to be meritless on the following grounds:-

- a) The petitioner claims application of Bihar Pension Rules after more than six years of his superannuation from the service under the Corporation without raising any objection during his service period.
- b) Admittedly, Contributory Provident Fund Scheme was applicable in case of the employees of the Corporation.
- c) The petitioner's case is squarely covered by an order of this Court in case of Ramesh Prasad Singh and Ors. Vs. State of Bihar and Ors. dated 24.03.2014 passed in C.W.J.C. No. 21105 of 2013.”

The learned single Judge could not have put the matter



simpler than what he has and when the facts being what they are, the only option left was to dismiss the writ application because it was a misplaced kind of expectation and prayer to make on behalf of the appellant seeking pension from the Corporation where there is no provision or from the State Government because he feels that he was a State Government employee, but the question is still begging an answer that as to when was his service taken over by the State.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.04.2017
Transmission Date	N/A

